

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1576

Introduced by Assembly Member Nunez

February 22, 2005

An act to ~~amend Section 26003 of the Public Resources Code, relating to energy; add Section 454.6 to the Public Utilities Code, relating to public utilities.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1576, as amended, Nunez. ~~California Alternative Energy and Advanced Transportation Financing Authority~~ *Electrical corporations: rates: repowering projects.*

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Under existing law, a public utility has a duty to serve, including furnishing and maintaining adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons and the public. The Public Utilities Act requires the commission to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives, including the requirement that the procurement plan enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

Existing law, until January 1, 2007, requires the State Energy Resources Conservation and Development Commission (Energy Commission) to establish a process for the expedited review of

applications to construct and operate thermal powerplants and related facilities and for the expedited review of repowering projects.

This bill would require the commission to deem a contract entered into pursuant to a procurement plan by an electrical corporation for the output of a repowering project that meets specified criteria to be reasonable per se, and would require that the costs of that contract be recoverable in rates from all customers who benefit, taking into account any collateral requirements and debt equivalence associated with the contract.

~~Existing law, the California Alternative Energy and Advanced Transportation Financing Authority Act, establishes the California Alternative Energy and Advanced Transportation Financing Authority and prescribes the duties of the authority. Existing law defines “alternative sources” of energy, for purposes of the act, to mean the application of cogeneration technology, as defined; the conservation of energy; or the use of solar, biomass, wind, geothermal, certain hydroelectricity, or any other source of energy, the efficient use of which will reduce the use of fossil and nuclear fuels.~~

~~The bill would include in that definition the use of electricity from an existing electrical generating facility repowered for increased efficiency.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 26003 of the Public Resources Code is~~
- 2 ~~amended to read:~~
- 3 ~~SECTION 1. The Legislature finds and declares all of the~~
- 4 ~~following:~~
- 5 ~~(a) It is in the public interest for the this state’s electricity~~
- 6 ~~generating facilities to provide clean, reliable, efficient, and~~
- 7 ~~affordable power to the state’s electricity consumers.~~
- 8 ~~(b) Certain existing electric generating facilities are~~
- 9 ~~strategically located and interconnected to gas transmission~~
- 10 ~~pipelines and the electric transmission system in a manner that~~
- 11 ~~optimizes their reliability, deliverability, their cost-effectiveness,~~
- 12 ~~and their ability to deliver power to load centers.~~
- 13 ~~(c) Many of these existing electric generating facilities, while~~
- 14 ~~located on optimal sites, exhibit less than optimal environmental~~

1 *performance, reliability, and efficiency compared to facilities*
2 *that have been more recently permitted to operate.*

3 *(d) According to the State Energy Resources Conservation and*
4 *Development Commission, a number of these older, less efficient*
5 *electric generating facilities are at a high risk of being retired in*
6 *the next several years. As a result, their generating capacity,*
7 *which establishes a valuable reserve margin for the state, helps*
8 *to provide local reliability and voltage support, and alleviates*
9 *transmission congestion, will no longer be available.*

10 *(e) Because of their strategic location and existing*
11 *infrastructure, it is in the best interest of the state to optimize the*
12 *use of these sites by repowering these facilities.*

13 *(f) Investment in repowered electric generating facilities*
14 *replaces our aging facilities with more efficient and cost-effective*
15 *facilities that enhance environmental quality and provide*
16 *economic benefits to the communities in which they are located.*

17 *(g) Therefore, it is in the public interest for the state to*
18 *facilitate investment in the repowering of older, less-efficient*
19 *electric generating facilities in order to improve local area*
20 *reliability and enhance the environmental performance,*
21 *reliability, efficiency, and cost-effectiveness of these facilities.*

22 *(h) An effective means for facilitating that investment, while*
23 *ensuring adequate ratepayer protection, is to authorize electrical*
24 *corporations to enter into long term contracts for the output from*
25 *these facilities on a cost-of-service basis.*

26 *SEC. 2. Section 454.6 is added to the Public Utilities Code, to*
27 *read:*

28 *454.6. (a) The commission shall deem a contract entered into*
29 *pursuant to Section 454.5 by an electrical corporation for the*
30 *output of a repowering project that meets the criteria specified in*
31 *subdivision (b) to be reasonable per se, and the costs of that*
32 *contract shall be recoverable in rates from all customers who*
33 *benefit, taking into account any collateral requirements and debt*
34 *equivalence associated with the contract.*

35 *(b) To be eligible for rate treatment in accordance with*
36 *subdivision (a), a project shall meet all of the following criteria:*

37 *(1) The project is a modification of an existing generation unit*
38 *of a thermal powerplant that meets all of the following criteria:*

39 *(A) The project complies with all applicable requirements of*
40 *federal, state, and local laws.*

1 (B) The project is located on the site of, and within the existing
2 boundaries of, an existing thermal facility.

3 (C) The project will not require significant additional
4 rights-of-way for electrical or fuel-related transmission facilities.

5 (D) The project will result in significant and substantial
6 increases in the efficiency of the production of electricity,
7 including, but not limited to, reducing the heat rate, reducing the
8 use of natural gas, reducing the use and discharge of water, and
9 reducing air pollutants emitted by the project, as measured on a
10 per kilowatthour basis.

11 (2) The State Energy Resources Conservation and
12 Development Commission certifies that the project is eligible for
13 certification pursuant to Section 25550.5 of the Public Resources
14 Code.

15 (3) The Independent System Operator or local system operator
16 certifies that the project is necessary for local area reliability,
17 and the commission or local governing body, as applicable,
18 concurs.

19 (4) The project provides its output to consumers of this state at
20 the cost of generating that electricity, including a reasonable
21 return on the investment and the costs of financing the project.

22 ~~26003. As used in this division, unless the context otherwise~~
23 ~~requires:~~

24 ~~(a) "Authority" means the California Alternative Energy and~~
25 ~~Advanced Transportation Financing Authority established~~
26 ~~pursuant to Section 26004, and any board, commission,~~
27 ~~department, or officer succeeding to the functions of the~~
28 ~~authority, or to which the powers conferred upon the authority by~~
29 ~~this division shall be given.~~

30 ~~(b) "Cost" as applied to a project or portion thereof financed~~
31 ~~under this division means all or any part of the cost of~~
32 ~~construction and acquisition of all lands, structures, real or~~
33 ~~personal property or an interest therein, rights, rights-of-way,~~
34 ~~franchises, easements, and interests acquired or used for a~~
35 ~~project; the cost of demolishing or removing any buildings or~~
36 ~~structures on land so acquired, including the cost of acquiring~~
37 ~~any lands to which those buildings or structures may be moved;~~
38 ~~the cost of all machinery, equipment, and furnishings, financing~~
39 ~~charges, interest prior to, during, and for a period after,~~
40 ~~completion of construction as determined by the authority;~~

1 provisions for working capital; reserves for principal and interest
2 and for extensions, enlargements, additions, replacements,
3 renovations, and improvements; the cost of architectural,
4 engineering, financial, accounting, auditing and legal services,
5 plans, specifications, estimates, administrative expenses, and
6 other expenses necessary or incident to determining the
7 feasibility of constructing any project or incident to the
8 construction, acquisition, or financing of any project.

9 (c) (1) “Alternative sources” means the application of
10 cogeneration technology, as defined in Section 25134; the
11 conservation of energy; the use of electricity from an existing
12 electrical generating facility repowered for increased efficiency;
13 or the use of solar, biomass, wind, geothermal, hydroelectricity
14 under 30 megawatts and meeting the criteria set forth in
15 paragraph (2) of subdivision (c) of Section 15351 of the
16 Government Code, or any other source of energy, the efficient
17 use of which will reduce the use of fossil and nuclear fuels.

18 (2) “Alternative sources” does not include any hydroelectric
19 facility that does not meet state laws pertaining to the control,
20 appropriation, use, and distribution of water, including, but not
21 limited to, the obtaining of applicable licenses and permits.

22 (d) “Advanced transportation technologies” means emerging
23 commercially competitive transportation-related technologies
24 identified by the authority as capable of creating long-term, high
25 value-added jobs for Californians while enhancing the state’s
26 commitment to energy conservation, pollution reduction, and
27 transportation efficiency. Those technologies may include, but
28 are not limited to, any of the following:

29 (1) Intelligent vehicle highway systems.

30 (2) Advanced telecommunications for transportation.

31 (3) Command, control, and communications for public transit
32 vehicles and systems.

33 (4) Electric vehicles and ultralow emission vehicles.

34 (5) High-speed rail and magnetic levitation passenger systems.

35 (6) Fuel cells.

36 (e) “Financial assistance” includes, but is not limited to, either,
37 or any combination, of the following:

38 (1) Loans, loan loss reserves, interest rate reductions, proceeds
39 of bonds issued by the authority, insurance, guarantees or other
40 credit enhancements or liquidity facilities, contributions of

1 ~~money, property, labor, or other items of value, or any~~
2 ~~combination thereof, as determined by, and approved by the~~
3 ~~resolution of, the board.~~

4 ~~(2) Any other type of assistance the authority determines is~~
5 ~~appropriate.~~

6 ~~(f) “Participating party” means either of the following:~~

7 ~~(1) Any person or any entity or group of entities engaged in~~
8 ~~business or operations in the state, whether organized for profit~~
9 ~~or not for profit, that applies for financial assistance from the~~
10 ~~authority for the purpose of implementing a project in a manner~~
11 ~~prescribed by the authority.~~

12 ~~(2) Any public agency or nonprofit corporation that applies for~~
13 ~~financial assistance from the authority for the purpose of~~
14 ~~implementing a project in a manner prescribed by the authority.~~

15 ~~(g) “Project” means any land, building, improvement thereto,~~
16 ~~rehabilitation, work, property, or structure, real or personal,~~
17 ~~stationary or mobile, including, but not limited to, machinery and~~
18 ~~equipment, whether or not in existence or under construction,~~
19 ~~that utilizes, or is designed to utilize, an alternative source, or~~
20 ~~that is utilized for the design, technology transfer, manufacture,~~
21 ~~production, assembly, distribution, or service of advanced~~
22 ~~transportation technologies.~~

23 ~~(h) “Public agency” means any federal or state agency, board,~~
24 ~~or commission, or any county, city and county, city, regional~~
25 ~~agency, public district, or other political subdivision.~~

26 ~~(i) (1) “Renewable energy” means any device or technology~~
27 ~~that conserves or produces heat, processes heat, space heating,~~
28 ~~water heating, steam, space cooling, refrigeration, mechanical~~
29 ~~energy, electricity, or energy in any form convertible to these~~
30 ~~uses, that does not expend or use conventional energy fuels, and~~
31 ~~that uses any of the following electrical generation technologies:~~

32 ~~(A) Biomass.~~

33 ~~(B) Solar thermal.~~

34 ~~(C) Photovoltaic.~~

35 ~~(D) Wind.~~

36 ~~(E) Geothermal.~~

37 ~~(2) For purposes of this subdivision, “conventional energy~~
38 ~~fuel” means any fuel derived from petroleum deposits, including,~~
39 ~~but not limited to, oil, heating oil, gasoline, fuel oil, or natural~~

1 gas, including liquefied natural gas, or nuclear fissionable
2 materials.

3 (3) Notwithstanding paragraph (1), for purposes of this
4 section, “renewable energy” also means ultralow emission
5 equipment for energy generation based on thermal energy
6 systems such as natural gas turbines and fuel cells.

7 (j) “Revenue” means all rents, receipts, purchase payments,
8 loan repayments, and all other income or receipts derived by the
9 authority from the sale, lease, or other disposition of alternative
10 source or advanced transportation technology facilities, or the
11 making of loans to finance alternative source or advanced
12 transportation technology facilities, and any income or revenue
13 derived from the investment of any money in any fund or account
14 of the authority.